

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DANIEL P. IRWIN,	§	
	§	No. 616, 2011
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Kent County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0409015984
Appellee.	§	

Submitted: December 28, 2011

Decided: March 27, 2012

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

O R D E R

This 27th day of March 2012, upon consideration of the appellant's opening brief and the appellee's motion to affirm, it appears to the Court that:

(1) On June 16, 2005, the appellant, Daniel P. Irwin, pled guilty to two counts of Rape in the Third Degree, a class B felony, under title 11, section 771 of the Delaware Code.¹ On September 29, 2005, the Superior Court sentenced Irwin to a total of thirty years at Level V, suspended after seven years, four years mandatory, for one year at Level IV, followed by three years at Level III probation and one year at Level II probation. As a

¹ Del. Code Ann. tit. 11, § 771 (2007 & Supp. 2010).

“special condition” the sentencing order provided that the probation imposed exceeded sentencing guidelines pursuant to title 11, section 4333(d)(1) of the Delaware Code (hereinafter “the § 4333(d)(1) special condition”).²

(2) Since his 2005 conviction, Irwin has been found in violation of probation (VOP) three times and resentenced. At the third and most recent VOP proceeding on October 28, 2011, the Superior Court resentenced Irwin to eight years and nine months at Level V suspended after one year (or successful completion of the Level V Family Problems program) for one year at Level IV followed by three years at Level III probation. This appeal followed.

(3) On appeal, Irwin claims that the VOP sentence imposed on October 28, 2011 violates the two-year probation limitation of title 11, section 4333(b)(1) of the Delaware Code.³ Irwin’s claim is without merit. It appears from the record that the October 28, 2011 sentencing order reimposed, as did each of the prior VOP sentencing orders, “[a]ll previous

² See Del. Code Ann. tit. 11, § 4333(d)(1) (2007) (providing, in pertinent part, that the limitation set forth in subsection (b) of this section shall not apply to “any sentence imposed for a conviction of any sex offense [including Rape in the Third Degree] . . . if the sentencing court determines on the record that a longer period of probation or suspension of sentence will reduce the likelihood that the offender will commit a sex offense or other violent felony in the future”).

³ See Del. Code Ann. tit. 11, § 4333(b)(1) (providing that “[t]he length of any period of probation or suspension of sentence shall be limited to . . . [t]wo years”).

terms and conditions,” which includes the § 4333(d)(1) special condition that was first imposed in 2005.

(4) To the extent Irwin attempts to argue that the October 28, 2011 VOP judge was required to make express findings of the § 4333(d)(1) special condition “on the record” and did not, the claim is not subject to appellate review in the absence of a transcript of the proceedings, which Irwin did not order for this appeal.⁴ The failure to include adequate transcript of the proceedings as required by the rules of the Court precludes appellate review of a defendant’s claim of error in the trial court proceedings.⁵

NOW, THEREFORE IT IS HEREBY ORDERED that the motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

⁴ *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987).

⁵ *Id.*